

BAKER & HOSTETLER LLP

45 Rockefeller Plaza

New York, New York 10111

Telephone: (212) 589-4200

Facsimile: (212) 589-4201

David J. Sheehan

Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)

Marc E. Hirschfield

Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)

Timothy S. Pfeifer

Email: [tpfeifer@bakerlaw.com](mailto:tpfeifer@bakerlaw.com)

Presentment Date: March 8, 2013

Time: 12:00 p.m.

Objections Due: March 8, 2013

Time: 11:00 a.m.

*Attorneys for Irving H. Picard, Esq., Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
And Bernard L. Madoff*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-01789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S MOTION FOR AN ORDER APPROVING  
THE RETENTION OF NCTM STUDIO LEGALE ASSOCIATO AS SPECIAL  
COUNSEL AS OF FEBRUARY 28, 2013**

Irving H. Picard, Esq. ("Trustee"), as trustee for the substantively consolidated  
liquidation of Bernard L. Madoff Investment Securities LLC ("BLMIS"), under the Securities

Investor Protection Act, 15 U.S.C. §§ 78aaa, et seq. (“SIPA”),<sup>1</sup> and Bernard L. Madoff (together, the “Debtors”), by and through his undersigned counsel, for his motion (the “Motion”) for authority to retain NCTM Studio Legale Associato (“NCTM”) as special counsel as of February 28, 2013, respectfully represents as follows:

### **Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to SIPA section 78eee(b) and 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this SIPA liquidation case and this Motion are proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are section 78eee(b)(3) of SIPA and §§ 327(e), 328, 329 and 330 of the Bankruptcy Code and Fed. R. Bankr. P. 2014.

### **Background**

3. On December 11, 2008 (the “Filing Date”),<sup>2</sup> the Securities and Exchange Commission (“SEC”) filed a complaint in the United States District Court for the Southern District of New York against the Debtors (No. 08 CV 10791). The complaint alleged that the Debtors engaged in fraud through the investment advisor activities of BLMIS.

4. On December 15, 2008, Judge Stanton entered an order pursuant to SIPA (the “Protective Decree”), which, in pertinent part:

- a) appointed the Trustee for the liquidation of the business of BLMIS pursuant to section 78eee(b)(3) of SIPA;
- b) appointed Baker & Hostetler LLP as counsel (“Counsel”) to the Trustee pursuant to section 78eee(b)(3) of SIPA; and
- c) removed the case to this Bankruptcy Court pursuant to section 78eee(b)(4) of SIPA.

---

<sup>1</sup> For convenience, future reference to SIPA will not include “15 U.S.C.”

<sup>2</sup> See section 78lll(7)(B) of SIPA.

5. The Trustee currently has an adversary proceeding pending (the “Adversary Proceeding”) involving defendants and witnesses located in Italy, *Picard v. Kohn et al.*, Adv. Pro. No. 10-05411 (BRL). This action requires the assistance of NCTM as special counsel in connection with the Adversary Proceeding and other matters where Italian law is at issue.

**Relief Requested**

6. The Trustee has determined that it will be necessary to engage counsel to represent him in Italy. Such legal counsel will enable the Trustee to carry out his duties in this SIPA liquidation proceeding. The Trustee, therefore, proposes to retain and employ the law firm of NCTM as its special counsel to represent the Trustee in Italy in connection with the Adversary Proceeding, and for any other matters going forward for which the Trustee requires legal representation in Italy, effective as of February 28 2013.

7. The Trustee seeks to retain NCTM as special counsel because of its knowledge and expertise in the laws of Italy and familiarity with the Trustee’s recovery efforts in Italy.

8. The services of NCTM are necessary and essential to enable the Trustee to execute faithfully his duties herein.

9. NCTM has indicated a willingness to act on the Trustee’s behalf to render the foregoing professional services.

10. The Trustee submits that NCTM’s provision of professional services to the Trustee is permissible under section 78eee(3) of SIPA and is in the best interest of the Debtors’ estate and customers and creditors.

11. To the best of the Trustee’s knowledge, and except as disclosed in the declaration of disinterestedness of Vittorio Nosedà (the “Nosedà Declaration”), executed on February 28, 2013 and annexed hereto as Exhibit A, the members, counsel and associates of NCTM are disinterested pursuant to section 78eee(b)(3) of SIPA and do not hold or represent any interest

adverse to the Debtors' estate in respect of the matter for which NCTM is to be retained.

NCTM's employment and retention are necessary and in the best interests of the Debtors' estate and its customers and creditors.

12. NCTM will be compensated at agreed upon rates, listed below, which reflect a reduction of its normal rates by ten percent (10%). Applications for compensation to NCTM will be filed with this Court pursuant to applicable statutes and rules. NCTM's rate information is as follow<sup>3</sup>:

Level of Experience	Normal Rates	Agreed Upon Rates
Partners	EURO 350 – 450 per hour	EURO 315 – 415 per hour
Associates	EURO 80 – 250 per hour	EURO 72 – 225 per hour

13. SIPC has no objection to this Motion and, pursuant to SIPA section 78eee(b)(3), SIPC specifies that the Trustee should be authorized to retain NCTM as special counsel for the purposes identified herein.

#### **Notice**

14. Notice of this Motion has been given to SIPC, the SEC, the Internal Revenue Service, the United States Attorney for the Southern District of New York, and, by way of the ECF filing that will be made, all parties that have filed a notice of appearance herein. In light of the nature of the relief requested, the Trustee submits that such notice is good and sufficient, and no other or further notice is necessary or required.

WHEREFORE, the Trustee respectfully requests that the Court enter an order substantially in the form of Exhibit B hereto, (a) granting this Motion; (b) authorizing the Trustee

---

<sup>3</sup> The conversion rate as of the filing of this application are as follows:

Level of Experience	Normal Rates	Agreed Upon Rates
Partners	\$465 – \$600 per hour	\$419 – 540 per hour
Associates	\$105 – \$335 per hour	\$95 – \$ 302 per hour

to employ NCTM as special counsel for the purposes described herein, as of February 28, 2013;  
and (c) granting the Trustee such other and further relief as is just and proper.

Dated: New York, New York  
February 28, 2013

Respectfully submitted,

/s/ Marc E. Hirschfield

Baker & Hostetler LLP  
45 Rockefeller Plaza  
New York, New York 10111  
Telephone: (212) 589-4200  
Facsimile: (212) 589-4201  
David J. Sheehan  
Email: [dsheehan@bakerlaw.com](mailto:dsheehan@bakerlaw.com)  
Marc E. Hirschfield  
Email: [mhirschfield@bakerlaw.com](mailto:mhirschfield@bakerlaw.com)  
Timothy S. Pfeifer  
Email: [tpfeifer@bakerlaw.com](mailto:tpfeifer@bakerlaw.com)

*Attorneys for Irving H. Picard, Esq. Trustee for  
the Substantively Consolidated SIPA Liquidation  
of Bernard L. Madoff Investment Securities LLC  
and Bernard L. Madoff*

300274159